

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In Re: Methyl Tertiary Butyl Ether ("MTBE")  
Products Liability Litigation

Master File No. 1:00-1898  
MDL 1358 (SAS)  
M21-88  
ECF Case

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**This document relates to the following case:**

*City of New York, et al. v. Amerada Hess Corp., et al.*  
Case No. 04 Civ. 3417

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**DECLARATION OF ROBERT S. CHAPMAN**

Robert S. Chapman declares:

1. I am one of the attorneys representing the City of New York in this matter and I have been admitted pro hac vice by this Court. I am a partner at Greenberg Glusker Fields Claman & Machtinger LLP in Los Angeles. I have personal knowledge of the matters set forth herein and if called as a witness I could and would competently testify thereto under oath.

2. On Monday, August 10 in the evening, I spoke on the telephone with Dr. Kathleen Burns. I told her about the progress of the trial and gave her an estimate of when I believed her testimony would be needed. I told her our trial team needed her to come to New York this week to prepare her trial testimony. Dr. Burns told me that she had been told by attorneys for the City of New York that she would not need to testify until the latter part of September. She said she had professional and personal conflicts which would make her unavailable to either prepare her testimony or testify any time prior to the second week of September. She told me that she was unwilling to come to

New York to prepare and that she would be consulting with an attorney. Shortly thereafter I received a telephone call from Dr. Burns along with an attorney who identified himself as Scott Browning. Mr. Browning said that he was representing Dr. Burns in her role as an expert. Mr. Browning said that he was aware of the situation and that he was prepared to file a motion on Dr. Burns' behalf to withdraw as an expert witness in this matter. I told Mr. Browning I would consult with my colleagues and he and I agreed to speak the following evening.

3. On Tuesday, August 11, I spoke on the telephone with Dr. Burns, Mr. Browning and Susan Amron, one of the attorneys for the City of New York. Mr. Browning repeated his comments from the night before, and added that Dr. Burns did not believe that any of the attorneys she had worked with on behalf of the City had the necessary expertise to prepare her for her trial testimony. Mr. Browning said, on behalf of Dr. Burns, that she was not available to appear at trial until the latter part of September and was unsure whether she wished to appear at trial at all. He reiterated that he was prepared to file a motion with the Court to have Dr. Burns withdraw as an expert. Dr. Burns indicated that she was unwilling to come to New York to prepare her testimony because her documents were located in Boston. Mr. Browning suggested that counsel for the City request that the Court reorder Phase III of the trial to accommodate Dr. Burns' schedule if she agreed to testify.

4. I have been a trial attorney for over 30 years. In my opinion, a relationship of trust must exist between an attorney and an expert witness in order for the client to be properly represented. That trust is totally lacking as between Dr. Burns and

the trial team representing the City in this case. Therefore, a substitute expert is required to replace Dr. Burns.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed: this the 13<sup>th</sup> day of August, 2009 /s/



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